



LOST LABOR:

THE COLLATERAL CONSEQUENCES OF A CRIMINAL RECORD AND THEIR IMPACT ON NEW HAMPSHIRE'S WORKFORCE



A report by the American Civil Liberties Union of New Hampshire
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EXECUTIVE SUMMARY

New Hampshire is grappling with two separate, but not entirely disconnected, problems: the opioid epidemic and a workforce shortage. It is old news that New Hampshire is one of the hardest hit states by the opioid epidemic.¹ While the epidemic is foremost a health crisis, it also has a criminal justice component and has resulted in more people acquiring a criminal record.

A criminal record in turn brings a host of collateral consequences beyond the penalties imposed by a court. These include significantly reduced opportunities for employment, often lasting for years or even indefinitely. People with a criminal record are more likely to be unemployed, and when they are employed, they earn 40 percent less on average than someone without a record.² Families, communities, and businesses feel the loss in earning potential.

New Hampshire is simultaneously confronting a growing workforce shortage. The state's unemployment rate in June 2018 was 2.7 percent³ – the lowest in the country.⁴ As a result of such low unemployment, employers are struggling to fill jobs. Thousands of jobs sit unfilled across the state. The workforce shortage is so dire that it has been called a “threat” to economic expansion.⁵ Put simply, New Hampshire needs workers.

Granite Staters with a criminal record are typically eager to work, but face numerous barriers to employment. These include the box on many application forms asking if the individual has a criminal record. Often a checked box is used as an automatic disqualifier by employers. Similar questions restrict access to many occupational licenses and certifications. Such barriers can apply regardless of what's on a person's record or what they may have done to rehabilitate themselves.

This report discusses the many collateral consequences of a criminal record and offers recommendations for overcoming them in New Hampshire. These include adopting fair chance hiring to remove the box inquiring about a criminal record from application forms and removing the parallel inquiry for occupational licenses. Employers could still ask about a record during an interview and could still opt not to hire someone with a record, but removing the box would enable applicants to explain their record and enable employers to better consider it in context.

As noted in the report, along with health-related solutions for the opioid epidemic, our state would benefit from also reducing the barriers to successful re-entry. Recidivism rates decrease when recently-released individuals have reliable employment.⁶ Additionally, reducing the barriers to re-entry could also place more people in New Hampshire's workforce.

¹ <https://www.usnews.com/news/best-states/articles/2017-06-28/why-new-hampshire-has-one-of-the-highest-rates-of-opioid-related-deaths>

² <https://www.sentencingproject.org/wpcontent/uploads/2015/11/Americans-with-Criminal-Records-Poverty-and-Opportunity-Profile.pdf>

³ <https://www.nhes.nh.gov/elmi/statistics/documents/nr-current.pdf>

⁴ <http://www.newhampshire.com/D-H-tries-creative-solutions-to-workforce-shortage>

⁵ <http://www.newhampshire.com/article/20180721/NEWS02/180729903/0/NEWS21>

⁶ Peter Cove & Lee Bowes, “Immediate Access to Employment Reduces Recidivism,” https://www.realclearpolitics.com/articles/2015/06/11/immediate_access_to_employment_reduces_recidivism_126939.html

Note: This report includes stories of Granite Staters who have encountered collateral consequences to having a criminal record. To protect their privacy, we have changed the names of certain individuals.

THE OPIOID EPIDEMIC IN CRIMINAL JUSTICE TERMS

The opioid epidemic is significantly increasing the number of people with first-time felony convictions in New Hampshire. The equation is disturbingly simple. In the criminal justice system, a first possession of virtually any controlled substance constitutes a felony, and resulting drug convictions have been on the rise since the onset of the opioid epidemic.

This trend is evidenced by a series of data points, including the increase in opened felony cases, the increase in the number of those cases that involve opioids, and in the approximate percentage of those cases that involve a first time offender. These different data points are explained below.

The first is the steady increase of felony cases opened⁷ by the NH Public Defender Program (NHPD)⁸ over the past eight fiscal years:

FY10	5405 cases
FY11	5647 cases
FY12	6111 cases
FY13	6141 cases
FY14	6865 cases
FY15	7180 cases
FY16	8141 cases
FY17	8283 cases ⁹

These numbers become more stark when factoring in that the NHPD's overall case load increased by only 4 percent from FY 2012 to 2017 (27,706 to 28,750). Yet, the number of felonies during that same time period increased by 35 percent. These figures are a strong indicator that felonies are being charged much more frequently, which means more people are acquiring a felony record that will limit their economic opportunities going forward.¹⁰

Additional data makes clear that this increase in felony cases is primarily due to the opioid epidemic. The numbers below reflect the number of felony cases opened by the NHPD that specifically involve fentanyl, heroin, or fentanyl and heroin.

⁷ A case is opened by the Public Defender Program when a public defender is appointed by a court to represent an individual who cannot afford to retain a lawyer. The "opening" of a felony case means at least one felony charge has been filed against an individual.

⁸ The New Hampshire Public Defender Program keeps this kind of criminal justice data in order to have clear metrics for the New Hampshire legislature as to their caseloads, which ensures we are receiving quality data. Because of NHPD's data collection system, the drug-case numbers used in the report are more accessible as compared to other possible sources.

⁹ We obtained this data directly from the New Hampshire Public Defender Program.

¹⁰ *Id.*

Fiscal Year	2014	2015	2016	2017
# of fentanyl possession cases	0	75	338	465
# of heroin possession cases	9	312	868	622
# of fentanyl/heroin cases	0	0	12	116
Total:	9	387	1218	1203 ¹¹

These numbers are conservative, as they reflect only “simple” possession cases. They do not include sale cases involving these drugs, possession with intent to sell cases, conspiracy to sell cases, or other drug cases. These numbers also do not include cases in which contract or private counsel were appointed, or cases in which an individual retained counsel. If all those additional cases were added, they would likely add hundreds of cases to the bottom-line totals.

Even alone, however, these very conservative estimates reflect the size of the opioid epidemic in criminal justice terms. In turn, they also suggest that the population in New Hampshire facing the collateral consequences of a criminal record is growing, even while the overall incarceration rate in the state is declining.¹²

Between 2015 and 2017, the number of only opiate possession cases opened by the Public Defender Program increased over 300 percent. An informed estimate suggests that about 50 percent of these opened felony cases result in conviction¹³ and that approximately 30 percent of those convictions are first-time felony convictions.¹⁴ The translation of these estimates would be that in 2015 approximately 58 individuals acquired a felony possession-of-an-opiate conviction; in 2017 that number soared to approximately 180.¹⁵ In sum, as a result of the opioid epidemic, more Granite Staters are seeking to re-enter society with a criminal record and facing the resulting barriers to employment, affordable housing, and other services.

Reliable employment is a central ingredient to reducing recidivism. A job provides stability and resources, which lessen the chances that someone will go back to habits or substances that contributed or directly lead to their conviction and incarceration. Put another way, the harder it is for people with first time convictions and those recently released from incarceration to find jobs, the more likely a return to criminal behavior will occur. New Hampshire communities and families would benefit from reducing the barriers to successful re-entry, including as part of comprehensive efforts to address the opioid epidemic.

¹¹ *Id.*

¹² <http://www.unionleader.com/crime-Analysis-shows-incarceration-rates-in-NH-are-declining>

¹³ An estimate developed from years of NH Public Defender data.

¹⁴ An anecdotal survey of experienced prosecutors and criminal defense lawyers in New Hampshire suggests that this is the correct percentage. In conversations, all agreed that there are many more first-timers “acquiring” felony drug convictions than other types of crime, and more than ever before.

¹⁵ Again, this number does not include those with first-time felony convictions for possession-with-intent-to-sell or straight sale of an opioid. Nor does it include those with first-time felony-convictions unrelated to opioids who are entering the system.

NEW HAMPSHIRE'S WORKFORCE SHORTAGE

The New Hampshire Department of Employment Security announced in June 2018 that the unemployment rate in New Hampshire was 2.7 percent¹⁶ – the lowest in the country. The result is that more people are working in New Hampshire today than at any time previous.¹⁷ Low unemployment can be a sign of a strong economy, but there are downsides to it as well, including thousands of jobs going unfilled across the state.

As Tim Sink, president of the Greater Concord Chamber of Commerce explained, “It’s definitely a double-edged sword and it’s been this way not just since (last) June, but for years now. It’s a real challenge for employers to fill jobs and it doesn’t seem to be getting better. I think it’s a threat. So far we’ve seen some pretty good growth and new businesses in our region, but if this trend continues, we will not see expansions in New Hampshire, we’ll see businesses look to other states.”¹⁸

One of the big reasons for the workforce shortage is our aging workforce. As current workers reach retirement and young people move out of the state, we are left with fewer and fewer workers in the prime of their career, often categorized as those between the ages of 20 and 55.¹⁹ This is particularly challenging for certain fields. For instance, one construction employer explained to this report’s authors, “We have a shortage of everything in construction,” referring to plumbers, electricians, and other tradesmen.

As this report lays out, the presence of the box on applications likely aggravates the workforce shortage. The often categorical elimination of applicants at the front end of the hiring process by virtue of the box designating a criminal record reduces the hiring pool. Compounding this, certain occupational licenses and certifications that are denied to those with a criminal record are necessary in fields with the greatest workforce shortage, including construction and healthcare.

Not everyone with a criminal record will be a good fit for every job, and certain jobs have federal or state laws restricting people with specific convictions or any criminal record from filling them. But, the removal of the box for jobs without such legal restrictions and replacing it with an informed assessment of an applicant’s record could lead to identifying more individuals with the skills sought by employers.

One Seacoast grocer explained well the struggle to overcome the workforce shortage with the employment restrictions in place for someone with a criminal record.

Finding reliable employees is hard, especially given the workforce shortage. As a store that sells alcohol, I cannot employ anyone with a felony record if they may stock or handle beer or wine merchandise without getting a waiver from the state. I have been in the grocery business for many years, and I still do not understand why this ban on people with felony records still exists. My experience says there is no need for it.

¹⁶ <https://www.nhes.nh.gov/elmi/statistics/documents/nr-current.pdf>

¹⁷ <http://www.newhampshire.com/D-H-tries-creative-solutions-to-workforce-shortage>

¹⁸ <http://www.newhampshire.com/article/20180721/NEWS02/180729903/0/NEWS21>

¹⁹ <https://www.nhbr.com/June-22-2018/Workforce-shortage-continues-to-hamper-NHs-economy/>

THE UBIQUITY OF PEOPLE WITH CRIMINAL RECORDS IN NEW HAMPSHIRE

Setting the opioid epidemic aside, research as to the total number of people with criminal records, though imprecise, provides some indication of just how many people are affected by the collateral consequences of a criminal record, including being kept out of the workforce. Nationally, approximately one-third of adult Americans – defined as those 23 years or older – had a criminal record as of July 1, 2015.²⁰ For the sake of comparison, that number is approximately the same as the number of four-year college graduates in the United States and is greater than the number of married couples in the country.

In New Hampshire, there are 1,047,407 adults 20 years old or older.²¹ If one uses the rough estimate mentioned above, then about 349,000 people in the state have a criminal record; that is, 349,000 people in New Hampshire have been at least arrested and fingerprinted, the FBI standard for creating a record for a person.²²

To sharpen the point further, we reviewed the numbers for those specifically with felony records, the most likely type of criminal record to have substantial employment and life consequences. Nationally, approximately, 8.6 percent of adult Americans have felony convictions.²³ That translates into approximately 12 million Americans with felony records – including those who have completed their sentences. This number will continue to rise as 95 percent of those currently incarcerated are released at a rate of about a half million per year.²⁴

When these figures are applied to New Hampshire, they translate into approximately 90,000 Granite Staters with a felony record. Like the national figure, this state figure will grow each year, particularly during the ongoing opioid epidemic. For example, last year, approximately, 3,500 people were convicted of felonies in the state.²⁵ A non-scientific survey of New Hampshire criminal justice practitioners very conservatively estimates that about 30 percent of this number are first-time convictions – translating into approximately 1,100 new Granite Staters acquiring a felony record each year and experiencing the resulting collateral consequences.²⁶

²⁰ This number is primarily derived from the FBI's Interstate Identification Index (III). An individual is entered into the III when he or she is arrested and fingerprinted by a local, state, or federal law enforcement agency.

<https://www.brennancenter.org/blog/just-facts-many-americans-have-criminal-records-college-diplomas>

²¹ Department of Employment Security (DES). Note that the FBI and the DES use different age spans to characterize different populations. <https://www.nhes.nh.gov/elmi/products/slideshow/Imi-chartroom/img020.gif>

²² <https://www.politifact.com/new-york/statements/2017/aug/18/andrew-cuomo/yes-one-three-us-adults-have-criminal-record/>

²³ Uggen, Christopher, Melissa Thompson, and Jeff Manza. 2000. "Crime, Class, and Reintegration: The Socioeconomic, Familial, and Civic Lives of Offenders." Paper presented at the American Society of Criminology meetings, San Francisco, November 18.

²⁴ Sarah Shannon, Christopher Uggen, Melissa Thompson, Jason Schnittker, and Michael Massoglia, *Growth in the U.S. Ex-Felon and Ex-Prisoner Population, 1948 to 2010*, 2011, <http://paa2011.princeton.edu/papers/111687>

²⁵ This number is based on data from the New Hampshire Public Defender Program and the court system.

²⁶ We spoke with five experienced criminal defense lawyers and five experienced prosecutors to generate this estimate.

Evan

Evan lowers his eyes when he talks about his younger years. He isn't proud of his alcoholism or what he did, but won't lie about it either. He was convicted of assault in another state and completed the court-ordered sentence there. He sought a new start in New Hampshire. When he arrived, he applied to every business in walking distance from where he was staying, as his driver's license had expired while he was in jail. He estimates it was over 15 businesses, including Home Depot and Burger King. He checked the box asking if he had a criminal record on every application. He didn't receive a single phone call or interview.

Needing work, he finally took a job with a construction crew that paid under the table. The reality in the construction business is that it is not uncommon for workers to have run-ins with the law. With records weighing them down, many choose to work under the table. But, employers take advantage of this by paying them less. "Employers know that certain guys can't go get a job somewhere else, so they exploit them," Evan explained, "but, what can you do about it when it's the only job available?"

Evan knew he would get paid less than his work was worth. What he didn't expect was that the crew manager would openly use cocaine on the job site. "Despite my problems with alcohol, I had never done hard drugs until that job," Evan said. He developed an addiction to cocaine and then heroin, leading to new charges for drug possession and DWIs, and resulting incarceration.

"I'll have to tell them about my record, and it's all over at that point." – Evan, in regards to applying for his Master Electrician license.

After he was released, he again went through a round of job applications with no success. Through friends, he finally got a job with a small construction business that knew about his record and was willing to take him on as a journeyman. Evan is now been completely clean, a diligent AA member, and even serves as a sponsor. "I know how hard it is to get clean," he said, "the least I can do is help others trying their hardest to get there."

Still, Evan's record is holding him back. He has a good job, but he has the skills for a better one. He's done everything he needs to in order to apply for his Master's Electrician license, but is afraid of applying because of his record. "I'll have to tell them about my record, and it's all over at that point," he said.

Evan enjoys his work and very much wants to be a Master Electrician – a trade that is in desperately short supply in New Hampshire. But, so long as the licensing board disqualifies those who have a record, Evan will be prevented from utilizing his skills and from helping fill the workforce shortage.

EMPLOYMENT BARRIERS FOR PEOPLE WITH CRIMINAL RECORDS

A wealth of research demonstrates that incarceration is associated with two economic collateral consequences: limited future opportunities for employment and lower earning potential.²⁷ Put differently, nationally, more than 60 percent of people formerly incarcerated are unemployed one year after release. Those who do find jobs are paid 40 percent less annually than people without a criminal record.²⁸ The conclusion is, all else being equal, a criminal record is associated with worse employment opportunities.

One study went further. It sent black and white individuals to potential employers in Wisconsin.²⁹ Some of the testers had criminal records and some did not. The jobs for which they applied were relatively entry-level: restaurant workers (18%), laborers or warehouse workers (17%), production workers or operators (12%), customer service (11%), sales (11%) and clerical (5%).³⁰ The study concluded that “a criminal record reduces the likelihood of a callback by 50 percent.”³¹ Moreover, this study helped establish what is generally accepted today - that a criminal record is not simply “associated” with poor employment outcomes, it is causally related to such poor outcomes.

The societal impact of this causal relationship does not stop with the person who has a record. Limited employment opportunities and low earning potential are strong predictors of recidivism.³² Researchers have established that “the sooner ex-offenders are employed, the less likely they will commit future crimes resulting in further jail and prison time.” Moreover, a 20 percent reduction in a return to crime occurs with non-violent offenders who are employed soon after release.³³

The unemployment or under-employment of those with a criminal record has a substantial economic impact. The National Employment Law Project estimates that the U.S. economy lost

²⁷ Freeman, Richard B. 1987. “The Relation of Criminal Activity to Black Youth Employment.” *Review of Black Political Economy* 16 (1–2): 99–107; Western, Bruce. 2002. “The Impact of Incarceration on Wage Mobility and Inequality.” *American Sociological Review* 67 (4): 526–46.

²⁸ <https://www.sentencingproject.org/wpcontent/up:oads/2015/11/Americans-with-Criminal-Records-Poverty-and-Opportunity-Profile.pdf>

²⁹ Devah Pager, “The Mark of a Criminal Record,” *American Journal of Sociology* 108, no. 5 (March 2003): 937-975.

³⁰ This study went further than those studies that have relied on sending applications in without the additional feature of actual contact with the employer.

³¹ Pager, 2003

³² Shover, Neil. 1996. *Great Pretenders: Pursuits and Careers of Persistent Thieves*. Boulder, Colo.: Westview; Sampson, Robert J., and John H. Laub. 1993. *Crime in the Making: Pathways and Turning Points through Life*. Cambridge, Mass.: Harvard University Press; Uggen, Christopher. 2000. “Work as a Turning Point in the Life Course of Criminals: A Duration Model of Age, Employment, and Recidivism.” *American Sociological Review* 65 (4): 529–46.

³³ Peter Cove & Lee Bowes, “Immediate Access to Employment Reduces Recidivism,” https://www.realclearpolitics.com/articles/2015/06/11/immediate_access_to_employment_reduces_recidivism_126939.html

over \$78 billion dollars in GDP in 2014 due to the number of people with a record who could not find work.³⁴ The flip side is that employing more people with a record would increase revenue.³⁵

This national research begs the important question as to what barriers to employment exist in New Hampshire for those with criminal records, and more importantly, what can be done to help reduce those barriers. The short answer is the State of New Hampshire, towns, cities, municipalities, and private employers have made it quite difficult for people with a conviction, particularly a felony conviction, to get back on their feet and to become a productive, contributing member of society after meeting all the obligations of their conviction. Some of the difficulty is built into statutory and regulatory laws that are easy to identify. Some of the difficulty – the practices of private employers, for instance – can be tracked only on an anecdotal basis.

THE BOX

One of the most immediate and visible hurdles that people with a criminal record face is what’s known as “the box.” This refers to the little box on application forms that applicants are asked to check if they have a criminal record. While most often the application does not say that checking the box will disqualify an applicant for a job, it often results in automatic or near-automatic disqualification in practice.

The mere presence of the box does at least two things: 1) it can deter people from applying as they assume they will be automatically disqualified; and, 2) it enables employers to automatically discard applications with checked boxes without ever learning the details of the applicant’s record, such as timing and subsequent rehabilitation.

The box is commonplace in the public employment sphere, including for jobs with the State of New Hampshire, towns, cities, and municipalities. In a sampling of ten New Hampshire municipalities, eight had some version of the box. Some, like Concord (felony), Manchester (felony and misdemeanor), and Nashua (crime), asked directly about criminal convictions. Others asked slightly more indirectly via a criminal record check authorization (Laconia & Rochester). Three asked about crimes, but also included up-front language stating that a record was not an automatic disqualifier (Berlin, Claremont and Littleton). Three did not include the required annulment language (Concord, Laconia and Littleton).³⁶

Only two did not have an indirect or direct version of the box on the initial application – Keene and Portsmouth. Portsmouth does state that at some point a pre-employment screening, a drug

³⁴ The National Employment Law Project, “The Business Case: Becoming a Fair-Chance Employer.” <https://s27147.pcdn.co/wp-content/uploads/Business-Case-Fair-Chance-Employment.pdf>

³⁵ The National Employment Law Project, “The Business Case: Becoming a Fair-Chance Employer.” <https://s27147.pcdn.co/wp-content/uploads/Business-Case-Fair-Chance-Employment.pdf>

³⁶ Note that RSA 651:5(f) requires that: “In any application for employment, license or other civil right or privilege, or in any appearance as a witness in any proceeding or hearing, a person may be questioned about a previous criminal record only in terms such as “Have you ever been arrested for or convicted of a crime *that has not been annulled by a court?*” (emphasis added) This is discussed further in the later section on occupational licensing.

test, and a background check would be done, thus suggesting a later-in-the-process consideration of a criminal record.

The inclusion of the box for public employment jobs can serve to deny people with a criminal record more stable, long-lasting jobs with benefits – exactly the type of job that, by all accounts, could reduce the risk of recidivism.

In the private employment sphere, the presence or absence of the box is difficult to quantify. The number of private employers in New Hampshire is both wide and varied. Documenting what some private employers do in one sector of private industry tells us little about other industries' practices. That said, our discussions with employers, employees, chambers of commerce, and the NH Department of Corrections suggest that the box is a common feature of private employment applications.

An experiment in the city of Concord begins to show the possible prevalence of the box. We obtained seven employment applications from businesses on Concord's Main Street. Four of the applications had some form of a box. Two simply asked "Have you ever been convicted of a felony? Y/N?" One asked "Have you ever been charged with a crime? If yes, were you convicted of a felony? If yes to either question, state the nature of the offense and disposition of the case." The last of the four asked six questions, including whether the individual has been indicted by grand jury, been placed on probation, pled no contest, etc.³⁷

A quick survey of online applications for chain businesses in New Hampshire found that two, both national chains, asked, "Will you consent to a drug test, background check and motor vehicle record report prior to employment if the position you are applying for requires?" Another, a restaurant, asked about non-annulled felony convictions; did not require an answer to the question and said, "A conviction will not necessarily exclude you from employment."

Bethany

Bethany wants to work, needs to work to care for her family, and sees all the "Help Wanted" signs around her community. But like a lock on a door, her record continues to act as a disqualifier.

A couple years ago, Bethany had a productive job that she had held for some time. One winter, she ended up as the only working member of her household, which included five adults and one baby. She started misappropriating money from her employer to pay bills, always paying the money back afterwards, until one time she was not able to do so in time.

Bethany owned up to her mistake as soon as her actions were discovered. She cooperated with law enforcement from the beginning, pleading guilty to one felony charge of misappropriation of funds and served the time assigned to her by the court.

³⁷ Note the absence of the required statutory language regarding annulled crimes. See previous footnote.

“I was so embarrassed. I’d never done anything like that before. I made a mistake, and I own it,” Bethany says looking back. She says she learned her lesson and would never make such a mistake again. “It was a miserable experience being in trouble. I never want to be in trouble again.”

As soon as Bethany was released from jail, she began applying for work. After being turned down by her first choices, she even applied for jobs that she had no interest in. “I need a job, period,” Bethany said recently, “I can’t be picky.” She routinely walks into businesses with “help wanted” signs. While initial inquiries are often positive, Bethany has been consistently turned down as a result of her record.

“It takes a beating, being denied and denied for something I cannot change.”

-Bethany

“Some places have even apologized to me. Managers have said they wished they could hire me, but their company’s policy will not allow it.”

What’s most frustrating for Bethany now are the accusations that she is not trying hard enough. Even her family doesn’t understand why it’s taking her so long to find work, which creates further strain on her family and home life. “It takes a beating,” Bethany explained, “being denied and denied for something I cannot change.”

Bethany actually has an employer eager to hire her – a homecare manager. The homecare industry is desperate for employees in New Hampshire, the employer said. In Bethany’s case, the employer is not looking for a licensed caregiver, she’s just looking for an office administrator. “Someone to file papers and the like,” the employer explained, “But, because of regulations, I can’t even hire Bethany to answer the phones.”

FAIR CHANCE HIRING

Over the last two decades, a number of states, cities, and counties have taken steps to increase the job prospects of people with a record. One of the main steps taken is what is called “fair chance hiring,” which involves delaying when an employer may ask an applicant whether they have a criminal record. Also sometimes called “ban the box,” these policies most often involve removing the box on application forms that applicants are asked to check if they have a criminal record.

Some fair chance hiring policies require that employers not ask about a criminal record until after a conditional offer of employment is made, while others require only that employers not ask on the paper application and instead ask in person so the applicant has an opportunity to explain their record and provide evidence of rehabilitation.

No fair chance hiring policy requires employers to hire applicants with a criminal record, nor is such mandatory hiring the intent. The goal, rather, is to enable applicants with a record to have a

fair chance at being considered by ensuring that more than the existence of their record is considered. Too often, applicants who check the box never hear back from employers. Their applications are discarded before they have a chance to explain the context of their record, their qualifications for the job that are unrelated to their record, or what they may have done since their arrest or conviction to rehabilitate themselves.

Nationally, as of August 2018, 31 states and the District of Columbia had implemented some version of fair chance hiring. These included Arizona (2017), California (2017, 2013, 2010), Colorado (2012), Connecticut (2016, 2010), Delaware (2014), Georgia (2015), Hawaii (1998), Illinois (2014, 2013), Indiana (2017), Kentucky (2017), Louisiana (2016), Maryland (2013), Massachusetts (2010), Minnesota (2013, 2009), Missouri (2016), Nebraska (2014), Nevada (2017), New Jersey (2014), New Mexico (2010), New York (2015), Ohio (2015), Oklahoma (2016), Oregon (2015), Pennsylvania (2017), Rhode Island (2013), Tennessee (2016), Utah (2017), Vermont (2016, 2015), Virginia (2015), Washington (2018), and Wisconsin (2016). In addition, over 150 cities and counties have similarly adopted a fair chance hiring policy.³⁸ These include Atlanta, Austin, Boston, Chicago, Detroit, Kansas City, New York City, Philadelphia, and Seattle.³⁹ The requirements and limitations of the fair chance hiring policy vary amongst these states and jurisdictions. According to the National Employment Law Project, almost 75 percent of Americans live in a jurisdiction with a fair chance hiring policy.⁴⁰

Fair chance hiring also has been voluntarily implemented by a number of companies nationwide, including Google, Koch Industries, Target, Bed Bath & Beyond, PepsiCo, American Airlines, Starbucks, The Hershey Company, Coca-Cola, Facebook, Uber, and Walmart.⁴¹ Over 185 employers, covering over 3 million employees, signed President Obama's Fair Chance Business Pledge in 2016.⁴² Koch Industries actually took it one step further by imploring the members of its Freedom Partners non-profit to similarly implement "ban the box." In its letter to Freedom Partners' members, Koch Industries' general counsel wrote:

We believe that capable and qualified individuals who want to work hard and contribute to their communities should not be rejected at the very beginning of the hiring process. Nor should anyone be judged forever solely on what happened on their worst day. Rejecting these individuals is also short-sighted from a business perspective. An estimated 70 million adults in the United States, or one in three, have some type of criminal record. For employers seeking the best talent, it makes sense for a company to consider all factors, including any prior criminal record, in the context of an applicant's

³⁸ Beth Avery and Phil Hernandez, "Ban the Box: U.S. Cities, Counties, and States Adopt Fair Hiring Policies," National Employment Law Project, <https://www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide/>

³⁹ <http://bantheboxcampaign.org/about/#.W13bIX4nY0o>

⁴⁰ National Employment Law Project, <https://www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide/>

⁴¹ <https://s27147.pcdn.co/wp-content/uploads/Ban-the-Box-Fair-Chance-State-and-Local-Guide.pdf>

⁴² Evans, *Ban The Box in Employment*, pg 15, <https://www.prisonerswithchildren.org/wp-content/uploads/2016/10/BTB-Employment-History-Report-2016.pdf>.

other life experiences. We are in a global competition for the best talent period; not the best talent with or without a record.⁴³

The desire by employers to weed out applicants with certain convictions is understandable. Banks, hospitals, schools, and national security industries have reason, and may have federal requirements, for not hiring people with certain convictions. The problem with the box is that there is no way to determine just from a checked box what offense the applicant previously committed. A checked box does not specify financial crime or drug crime or violent crime. Instead, all a box, by itself, enables is complete discounting of those with a record. Fair chance hiring enables employers to have more information about a person's record, enabling them to discern whether someone's record is actually relevant to the job at hand.

The decision to screen out potential employees who have any criminal record may sound like a means to identifying better employees. This in part is due to how embedded the stigma of a criminal record is in our culture. A potential employer may instinctually recoil at the idea of employing someone with a criminal record, thinking of the worst crimes whenever the words "criminal record" appear or whenever the box is checked. The impact of hiring someone with a criminal record, however, often defies the stigma.

Companies that make a point of hiring people with a record report that often such workers are particularly hard working, loyal to the company, and committed to being productive employees. They know they are working uphill every day. Research indicates that retention rates for those with criminal records are higher than those without records.⁴⁴ For example, one company adopted a program to recruit employees with criminal histories. It reduced turnover from 25 percent to just 11 percent.⁴⁵ A longitudinal study by Johns Hopkins Health Resource Center has found that retention rates for those with criminal records were substantially higher than those without records.⁴⁶

The impact of the "box" extends beyond employment to include admission forms for college. Asking college applicants to check a box can have the same negative impacts as the box on employment forms. Recognizing this, the non-profit organization that produces *The Common Application* has decided to eliminate the criminal record question – the box – from its application.⁴⁷ Over 700 colleges and universities across the country use *The Common*

⁴³ http://freedompartners.org/wp-content/uploads/2016/08/BanTheBox-Ltr_081516.pdf

⁴⁴ Dylan Minor, Nicola Persico, and Deborah M. Weiss, "Criminal Background and Job Performance," Working Paper, October 30, 2016, file:///Users/test/Downloads/SSRN-id2851951%20(1).pdf; see also Heather Boushey and Sarah Jane Glynn, "There Are Significant Business Costs to Replacing Employees," Center for American Progress, November 16, 2012, <https://www.americanprogress.org/wp-content/uploads/2012/11/CostofTurnover.pdf>.

⁴⁵ Matt Krumrie, "Why You Should Give Candidates with a Criminal Background a Second Chance," October 4, 2016. <https://www.ziprecruiter.com/blog/why-you-should-give-candidates-with-a-criminal-background-a-second-chance/>.

⁴⁶ Atkinson, "The Benefits of Ban the Box," 2014, http://www.southerncoalition.org/wp-content/uploads/2014/10/BantheBox_WhitePaper-2.pdf

⁴⁷ Elena Schwartz, "Ending Crime Checkbox for College Praised by Inmate Advocates," <https://thecrimereport.org/2018/08/10/ending-crime-checkbox-for-college-praised-by-inmate-advocates/#;> <https://www.theatlantic.com/education/archive/2018/08/common-app-criminal-history-question/567242/>

Application as their primary application. This change comes after years of advocacy from a variety of organizations who argued that the box disadvantages low-income students and students of color who are disproportionately impacted by the criminal justice system. A recent study found that “[n]o link has been established between having a criminal record and posing a risk to campus safety.”⁴⁸ Colleges may still supplement *The Common Application* with their own forms that include a question about school discipline or a criminal record.⁴⁹

The Federal Bonding Program: The federal government has had a program in place since 1966 to encourage employers to hire employees perceived as risky, most notably those with criminal records. The Federal Bonding Program (FBP), a creation of the U.S. Department of Labor, provides an employer with a no-cost fidelity bond to protect them from employee dishonesty including: theft, forgery, larceny, and embezzlement.⁵⁰ The FBP eloquently describes the problems that the formerly incarcerated face:

Each year, thousands of justice-involved citizens return home to restart their lives unfortunately to ridicule, discrimination, and hostility. No wonder annually, America’s 600,000 returning citizens are experiencing an up-hill battle that most times leads to recidivism. Many of those instances involve repeat, non-violent offenses due to lack of access to education, health/mental care, treatment, housing, training, and employment.⁵¹

The FBP can be accessed in New Hampshire through the Department of Employment Security.⁵²

Bill Blanchard

Bill’s childhood was not *Leave It to Beaver*. His parents divorced when he was eight, and his mother drank heavily throughout much of his childhood, leading to bouts of violence. He once lived with his math teacher for three months to escape the violence at home. He went to school as a kid because that’s what kids did, not because his family valued it. Looking back, Bill readily admits that he wasn’t a good student, often getting in trouble. “I was told I would go to prison since the sixth grade,” he recalls.

He started dealing drugs while still in high school, seeing it as a moneymaker. He eventually dropped out of high school two weeks before turning 16, at which time his mother gave him three choices: Get a job, go back to school, or get out of her house. So, Bill got a job.

⁴⁸ <http://www.communityalternatives.org/pdf/Reconsidered-criminal-hist-recs-in-college-admissions.pdf> at page 9.

⁴⁹ <https://www.theatlantic.com/education/archive/2018/08/common-app-criminal-history-question/567242/>

⁵⁰ <http://bonds4jobs.com/>

⁵¹ <http://bonds4jobs.com/our-services/job-seekers>

⁵² <https://www.nhes.nh.gov/services/employers/federal-bonding.htm>

Bill worked at a pizza place, but continued dealing drugs on the side. “Drugs paid,” as Bill puts it now, better than any minimum-wage job he could get as a teenager. At just 17 years old, he graduated from selling pot to selling cocaine. After a violent encounter with a customer, Bill went to live with his uncle in hopes of a new start. He entered Job Corps only to discover that the job sites were an excellent place to sell drugs. “Selling drugs was my normal back then.”

Over the course of a few years, Bill was arrested in Florida, Vermont, and New Hampshire, generally for misdemeanor assault, which occurred in the context of drug dealing. An altercation with police in Florida finally scared Bill into turning himself over to law enforcement in New Hampshire. He served 18 months of a six year sentence, followed by 12 months on parole, for weapons charges and burglary.

While in jail, waiting to be sentenced, Bill discovered faith. His Lord told him that he must take responsibility for his actions. He committed to turning his life around. “You hate yourself. You have a moral compass, you just ignore it,” Bill recalls of the years selling drugs and before he turned to faith.

His time in prison was rough, which served only to strengthen his resolve to reform his actions so as never to return to prison. “I knew I needed an alternative to drugin and thugin,” he said, looking back. He considered college for the first time after learning that he could be accepted so long as he had neither drug nor sex offenses. Despite all his years dealing drugs, Bill was never arrested or charged with drug-related offenses. Before he completed his sentence, he was accepted to NH Technical Institute. A career counselor eventually turned him on to nursing. He started as a Licensed Nursing Assistant and went on to become a Registered Nurse. Both professions accept applicants with a criminal record so long as it does not include drug or sex offenses.

Bill is always up front with employers about his record. He acknowledges that he benefits from the national and statewide nursing shortage in consistently finding employment. “Without that shortage, I know I would probably go to the end of the line because of my record,” he says. He knows this all too well from experience.

Bill applied to a Travel Nurse Program, which sends nurses to different hospitals in need. Bill was informally offered a position after a month-long hiring process. He was informed where he would initially be posted and given every indication that he would start there the following Monday. Friday night, two days before he expected to start, he was informed that the hospital turned him down due to his record.

“Having a criminal record is like having a long tail in a room full of rocking chairs.”

-Bill Blanchard

Like déjà vu, Bill was later offered a position with the Dartmouth Flex Team, a similar team of medical professionals who move around based on need. He informed the HR people of his record early in the hiring process. In this case, he was formally offered a position, only to be told two days later that the offer had to be rescinded, as “higher ups” would not sign off on him. This was

particularly upsetting as Bill had previously worked at the Dartmouth ICU and his record had not been an issue for Dartmouth then.

Bill later learned that in-between his time at the Dartmouth ICU and his application to the Dartmouth Flex Team, Dartmouth had added a new requirement that senior administrators sign a form stating that they know a new hire has a record.

While employers have turned him down, the nursing board never has. Every two years, he has to renew his nursing license. As part of that process, he is required to submit a letter explaining his record and rehabilitation since his conviction. In all his years as a nurse, his record has not changed, and yet he is required to submit a new letter every two years. While inconvenient, Bill is grateful for his license and readily complied with the requirement. Recently, Bill completed the process to annul his record. Next time he renews his license, he will not have to write such a letter.

“I’m here because so many people along the way looked at me and said, ‘you’re worth it,’” Bill said recently. He credits his faith, his family, and his community for helping him straighten out his life all those years ago. Now, he lives to take care of his wife and five children, and live up to his faith.

At the end of our interview, Bill noted briefly how he still calls upon his experience dealing drugs, but in a way that often goes unnoticed. As New Hampshire grapples with the opioid epidemic, Bill brings to his work a unique understanding. “I read people differently than those only trained about drugs in a classroom. I can tell when people are escalating much quicker than others,” he explained. Earlier in his career, he worked at the clinic in the Women’s Prison. “I always knew when prisoners were trying to con me,” he joked, “the guards loved having me around.” He also can speak a language unique to those caught up in drugs, enabling both empathy and frankness with patients. As New Hampshire grapples with the opioid epidemic, nurses with Bill’s experience offer a unique asset to ERs on the frontline.

OCCUPATIONAL LICENSING

Another significant barrier for people with a criminal record in finding employment in New Hampshire is the box-like exclusion for occupational licenses or certifications. Even if an individual with a criminal record has the skills to work in a licensed, certified, or registered occupation, the state, through statute and/or regulation makes it difficult for that person to do so. The Department of Employment Security has identified at least 144 different occupations in New Hampshire that require an occupational license, registration, or certification. These occupations range from embalmer to electrician to school counselor to body art practitioner. Each of these requires the completion of some sort of form at the front end of the application process.

A majority of these forms include requests for a listing of felony or misdemeanor convictions, any criminal convictions, or an authorization for the licensing board and/or agency to conduct its

own criminal record check. In total, almost 60 percent (85 of the 144) of these occupational forms request information about felony, misdemeanor, or criminal records.⁵³ Some also request authorization to conduct a criminal record check. Six forms request authorization for the criminal record check with no upfront question about the applicant's record.⁵⁴

The ability of an applicant to receive at least 63 percent (91 out of 144) of licenses, registrations, and certifications issued in New Hampshire depends to some extent on whether the applicant has a record. Little formal information is available regarding how the applicable boards weigh an applicant's record. In eight identifiable circumstances, the applicant is banned from getting the requested status, either completely or when certain crimes are listed.⁵⁵ In New Hampshire, a felony conviction disqualifies an applicant effectively for life from being a firefighter, an alcohol or drug counselor, a bail recovery agent, or from being in charge of any premise with a liquor license.⁵⁶

Some of the identified restrictions are at least somewhat tailored to the license or certification for which the individual has applied. For instance, the form to become certified as an auctioneer asks if the applicant has ever been convicted of "any felony or misdemeanor involving theft, fraud, deceit, misrepresentation, or other breaches of fiduciary duties..." Other forms are odder. An application to be an embalmer, for instance, asks, "Have you ever: ... been convicted of a felony or criminal act involving moral turpitude, not including traffic offenses?"⁵⁷ The form provides no definition of moral turpitude. A hunting and fishing guide must pass a criminal and Fish and Game record check, and must have a clean criminal record.⁵⁸

Anecdotally, several employers and employees have told us that boards frown on any criminal convictions, particularly felonies, when deciding to issue a license. For example, correctly or not, the perception among employers and potential employees is that one will not get a license as an apprentice electrician, let alone a journeyman or master electrician, if one has a felony conviction, even though the statute and regulations contain no explicit ban.

⁵³ A "criminal record" can be viewed as including arrests as well as convictions. For recordkeeping purposes, the FBI includes an arrest as part of a criminal record. When a form as described above uses the term, it does not explain what it means, leaving up to the applicant to interpret that which is required.

⁵⁴Emergency Medical Services Provider (<https://www.nh.gov/safety/divisions/fstems/ems/>); Advanced Practice Registered Nurse (APRN) (<https://www.oplc.nh.gov/nursing/forms-publications.htm>); Licensed Practical Nurse (LPN) (<https://www.oplc.nh.gov/nursing/forms-publications.htm>); Registered Nurse (RN) (<https://www.oplc.nh.gov/nursing/forms-publications.htm>); Licensed Nursing Assistant (LNA) (<https://www.oplc.nh.gov/nursing/forms-publications.htm>); Medication Nursing Assistant (MNA) (<https://www.oplc.nh.gov/nursing/forms-publications.htm>).

⁵⁵ Alcohol & Drug Counselor; Bail Recovery Agent; Firefighter; Professional Game Operator; Guardian Ad Litem; Hunting & Fishing Guide; Private Investigator & Reflexologist, Structural Integrator, or Asian Bodywork Therapist.

⁵⁶ RSA 179:23 IV. The Liquor Commission regulations contain a provision for a waiver (N.H. Code Admin. R. Liq. 404.06) though at least one grocery store owner with whom we spoke found the waiver process quite cumbersome.

⁵⁷ <https://www.oplc.nh.gov/funeral/documents/embalmer-application.pdf>

⁵⁸ <https://wildlife.state.nh.us/licensing/guides-reqs.html>

What the array of requests for information about someone's criminal record reveal is that there is no uniform approach to evaluating an applicant's record – or whether a record is included in the application process. Nor is there any obvious reason why some occupational application forms ask about a criminal record while others do not. A couple specific discrepancies demonstrate this well. For instance, body art practitioners (tattoo artists) are not asked any question about their criminal record when they apply for a license; however, manicurists must reveal any felony and misdemeanor convictions.

More significantly, the questions are asked in all sorts of different ways. Some ask for felonies only. Some ask for both felonies and misdemeanors, and some, more generically, for "crimes committed." Our analysis of all 144 failed to find an obvious reason for why certain occupations ask the question one way, while others another. Most likely, the questions differ because there is no official body trying to coordinate the different requirements and/or the requirements came about at different times.

Disturbingly, however, some of the questions themselves are asked in an illegal manner. RSA 651:5(f) requires that:

In any application for employment, license or other civil right or privilege, or in any appearance as a witness in any proceeding or hearing, a person may be questioned about a previous criminal record only in terms such as, "Have you ever been arrested for or convicted of a crime that has not been annulled by a court?"

Over 38 percent (55 out of the 144) of licensing, certification, and registration forms do not contain the qualification, "that has not been annulled by a court" when asking about an applicant's record.

Not only is the question phrased illegally when it excludes the annulment caveat, it also places on the applicant the difficult burden of choosing whether or not to reveal an annulled conviction. By doing so, it sends the impermissible message that, contrary to statute, an annulment is not really an annulment.

The authors of this report provide this information not to suggest that occupational boards and agencies should never consider an applicant's criminal record, or that they should always approve the applications of individuals with a criminal record. Rather, this analysis is provided to underscore how inconsistently information is sought about an individual's criminal record, and how that information is often asked in such a way as to prevent applicants from providing contextual information about a criminal record. The inclusions of felony, misdemeanor, or criminal conviction questions – effectively a "box" – and the request for authorization to conduct criminal record checks put in place an upfront screening test contrary to fair chance licensing practices.

It may be that some volunteer boards and government agencies review applications individually regardless of the answer to the criminal-history questions. Or, applications may be screened out automatically when a criminal record is indicated. What very possibly will happen, however, is that an applicant will never have the chance to explain to the board or agency the individualized

circumstances of a conviction in the context of their full set of skills, employment history, training and education. And, that serious risk of upfront screening currently has the tacit approval of the state.

At the very minimum, occupational boards and agencies should be required to ask a question about someone's criminal record in compliance with existing law. This means, any question about a criminal record must include the exception for any annulled crimes.

Dylan

Dylan is in high demand in New Hampshire, working as a master electrician (ME). He first received his ME license nearly two decades ago.

Dylan plead guilty to a class B assault charge and served three and a half years in prison. While in prison, he put his skills to good use on the maintenance staff, securing nearly two dozen letters from prison staff about his good character and work ethic.

To be an ME in New Hampshire, a person must renew their license every year, which requires paying annual dues and submitting a renewal form. In addition, every three years, an ME must take a 15-hour course on code updates. At each of these phases, an ME must sign a form on which they state that they are still of "upstanding moral character." According to the licensing board, this means, amongst other things, that the person does not have a criminal record.

"This system traps people who have a record into either lying or losing their license and their means of making a living," explained Dylan. A licensed ME earns significantly more per hour than a generalist.

Dylan was due to take the code update course while in prison. Unable to take the exam from inside, he had a friend take the online course for him. This used to be a common practice, he explained, as people could not afford to lose their license while inside. If an ME fails to renew their license or take the course every three years, they have to start from scratch and retake the licensing exam, which costs money.

As soon as Dylan was out of prison, he went back to work as an ME, starting up his own business. Every year when Dylan renews his ME license, he conceals his record. "If I acknowledge my record, I'll lose my license." Similarly, Dylan explained that he does not check the box on application forms that ask if he has a criminal record. "I know if I check that box that I won't be considered at all. Why else would they ask?"

"We have an everything shortage. In construction, the box isn't in the best interest of employees who want to work or in the best interest of employers who desperately need workers." – Dylan's employer.

This was one of the reasons that Dylan started his own business shortly after he got out of prison. He initially applied for two contracting jobs and opted not to check the box on either application form. He acknowledged the quandary that this creates for job seekers. “If I don’t check the box, and they run a background check just from the paper application, not only am I a criminal, but now I’m a liar. But, if I check the box, they will just discard the application automatically.”

Asked about the availability of workers, one of Dylan’s employers noted, “We have an everything shortage,” including electricians, plumbers, and carpenters. “In construction, the box isn’t in the best interest of employees who want to work or in the best interest of employers who desperately need workers,” the employer went on to say.

Dylan and his employer share a mutual desire to help train people in prison in construction trades, including to be electricians. “But, what’s the point if the licensing board will never accept them?” Dylan asked rhetorically. “We need more tradesmen. There are guys inside that would sign up for training in an instant. But, the system won’t allow them to fill the jobs most needed. How does that make any sense?”

HOUSING

The two most important determinants of whether recidivism will occur are employment and housing. Stable housing that is also affordable is a critical need for those re-entering society after a period of incarceration.⁵⁹ Some have an opportunity to return to a family setting of some sort. Many others are on their own. Those who are homeless upon release from incarceration face a substantially increased risk of recidivism.⁶⁰

The most common low-income housing program is Section 8, which is a federal program operated by the U.S. Department of Housing and Urban Development. The Section 8 restrictions are particularly laborious because they apply to both the applicant and their household. As part of the application process, the applicable public housing authority does a criminal background check on each household member over the age of 16. Offenses that result in someone registering as a sex offender or that include a pattern of illegal drug use or alcohol abuse result in disqualification for Section 8.⁶¹ This report will not go into detail on Section 8 as it is a federal program.

The New Hampshire Housing Finance Authority (NHHFA) has a variety of rules and regulations that reduce the chances of a person re-entering society from accessing affordable housing, separate from Section 8 housing. They will not approve a Request for Tenancy Approval for a

⁵⁹ The Urban Institute, National Portrait of Serious and Violent Offender Reentry Initiative, 7 (2004) available at:

https://www.svorievaluation.org/%5Cdocuments%5Cnationalportrait%5CSVORI_NationalPortrait.pdf.

⁶⁰ Nino Rodriguez and Brenner Brown, *Preventing Homelessness among People Leaving Prison*, 4 (Vera Institute of Justice, Dec. 2003)

⁶¹ <https://homeguides.sfgate.com/criminal-history-policy-low-income-housing-8476.html>

person with any of the designations below for 12 months after they are determined ineligible (under [RSA 203:8](#)):

- Applicant or household member committed corrupt or criminal actions, including fraud or bribery in connection with the NHHFA program. [24 C.F.R. §982.551\(k\)](#).
- Applicant or household member engaged in drug-related, violent, or other criminal activity which threatened the health, safety or other right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. [24 C.F.R. §982.551\(l\)](#).
- Members of the household abused alcohol in a way that threatened the health, safety or right to immediate vicinity of the premises. [24 C.F.R. §982.551\(m\)](#).⁶²

The NHHFA may, at its discretion, also bar an applicant if they or a member of their household was convicted in the last 15 years of: (1) homicide, (2) a sexual offense as defined in [RSA 651-B:1](#), IV, where the offender is required to register with the State's sex offender registry, although not for life, or (3) committing sexual offenses against children under the age of 18.⁶³ Additionally, the NHHFA may, at its discretion, bar or exclude an applicant or participant if the NHHFA determines that the applicant or participant personally, or whose family or household member, regardless of whether a conviction ensued, participated within seven years of the NHHFA's notice of denial or termination in assault (non-simple assault), rape, robbery, burglary, arson, or kidnapping.⁶⁴

The point here is not to contest either the substance of these statutes and regulations or their values and objectives. The point is to recognize that the statutes and regulations significantly reduce the opportunities for affordable housing for formerly-incarcerated individuals seeking housing as they re-enter society, including the opportunity to reunite with family in affordable housing. And, to acknowledge the linkage that can occur between limiting access to affordable housing and recidivism.

Those who struggle to find an affordable place to live may further struggle to find employment due to the lack of a consistent address. Some we have talked to in New Hampshire have told us that housing options for recently released individuals are few and far between. It is not uncommon as a result for recently released individuals to be sandwiched into a small room with several others. This is in part due to having few alternative options and in part to reduce costs. Moreover, landlords frequently take advantage of those recently released by creating remarkably inhospitable living circumstances in order to house as many week-by-week room renters as possible. Renters in these circumstances have little ability to demand better conditions give how few options they have for alternative housing.

⁶² New Hampshire Housing Finance Authority Housing Choice Voucher Administrative Plan, http://www.nhhfa.org/rent_docs/adminplan2011.pdf.

⁶³ Authority Housing Choice Voucher Administrative Plan, http://www.nhhfa.org/rent_docs/adminplan2011.pdf.

⁶⁴ New Hampshire Housing Finance Authority Housing Choice Voucher Administrative Plan, http://www.nhhfa.org/rent_docs/adminplan2011.pdf.

The result is a compounding effect: poor living conditions do not produce the most reliable employees and low wages for the under-employed reduce options for accommodations. If one then layers on the legitimate concern of parole officers with recently released individuals living with each other, the difficulties are compounded even further.

OTHER CONSEQUENCES OF A CRIMINAL RECORD

In addition to employment and housing barriers, there are a number of other restrictions and indirect consequences that result from a criminal record, particularly a felony record. For starters, by statute, a person with a felony record may not possess a firearm⁶⁵ and may not serve on a jury - ever.⁶⁶

In terms of re-entry, there are also motor vehicle consequences that can create financial hardship. For example, if one's license expires while serving a prison sentence, one bears the financial costs of renewal. Such costs may be too much for someone just released and in search of a job. And yet, not having a license can significantly reduce one's options for employment, for instance, to only those employers within walking distance. This is further complicated if those employers utilize the "box" on application forms.

Separately, if an individual had any unresolved motor vehicle violations pending at the time they entered prison, the individual's license likely would have been suspended for failure to resolve them in a timely fashion.⁶⁷ In addition, a recently released individual may have outstanding fines or restitution to pay for the underlying offense or for other offenses. By statute and regulation, once an individual is released from prison, they may have an obligation to repay the state for counsel fees through the Office of Cost Containment, or even for the cost of incarceration. Any such debt likely would have accumulated interest while the individual served time.⁶⁸

Individuals who are incarcerated may also have accumulated child support debt and have ongoing child support obligations at the time of release. Similarly, a recently released individual may have ongoing legal costs regarding either child custody or child support. These financial burdens underscore the need for a job and the hardship in affording housing.

In sum, the cascade of consequences that comes from a criminal record – particularly a felony record – puts an individual in a very challenging life situation as they strive to re-enter society. There are a litany of financial obligations that may await a person upon release, and yet the opportunities to earn an income to meet those obligations may be very limited. This situation is further compounded if the individual has a suspended license and/or cannot find affordable housing. All of these factors contribute significantly to the likelihood of recidivism – and the resulting financial and social costs on New Hampshire families and communities.

⁶⁵ RSA 159:3

⁶⁶ RSA 500-A:7-a

⁶⁷ RSA 263:10

⁶⁸ RSA 604-A:9

Tom Schoolcraft

Tom never liked school. It didn't interest him, and he didn't see how completing high school would serve him moving forward. At 16, he dropped out. He had a good work ethic and had worked since he was 13. He immediately found work, but not a job that paid well. Looking at the world, Tom considered his options. He had no interest in college or the military. He considered what he was good at, and one thing came to mind – he was very good at stealing. To acquire more money, he began breaking into houses with a couple of buddies. The stealing continued until young Tom and his buddies mistook a house for being empty, and Tom entered a room to find a person sleeping there. The encounter “freaked” Tom out, and he up and quit stealing. He told his buddies he was done. Two weeks later, his buddies were caught breaking into a different house and informed the police about Tom during the investigation.

Tom was charged and convicted of burglary. After serving his sentence in New Hampshire, he served two-years of probation for similar charges in Massachusetts. In addition, he paid roughly \$6,000 in restitution to the state of New Hampshire.

Even today, Tom recalls in vivid detail the life-altering impact of his time in jail. Even while still inside, he knew he never wanted to go back inside once released. Immediately upon release, he took a job at a car dealership. Despite his success there, he knew selling cars was not his career choice. Defying his childhood, he opted for college, enrolling at Keene State College full time. Still moved by his experience in jail, Tom reached out to the nearest jail to Keene State in hopes of volunteering there and giving back. He explained in his initial email to Cheshire County House of Corrections (“Cheshire”) that he had a record. Cheshire welcomed his offer, bringing him on first as a volunteer and then for a more formal internship, which lasted the duration of Tom's time at Keene State.

Throughout his time at Keene, Tom's plan had been to go to graduate school with the goal of becoming a professor of psychology. Towards the end of undergrad, professors and staff at Cheshire encouraged him to consider an alternative – a career in corrections. He had the passion for it and a budding resume in the field.

With this encouragement, Tom started looking into a career in corrections. He consulted with the Superintendent of Cheshire, Rick Van Wickler. They closely reviewed the regulations, finding no restrictions on a NH house of corrections hiring someone with a criminal record. In 2011, Tom began work as a corrections officer at Cheshire. He was promoted to booking officer after just four months and then to the rank of corporal after one year. Tom enjoyed the work, believing he had found his lifetime career.

After a year in corrections, an employee becomes “certified.” In preparation for Tom's certification, Superintendent Van Wickler submitted all of Tom's paperwork to the other superintendents in the state, per the usual practice of superintendents signing off on all new

certifications. The paperwork contained no mention of Tom’s record since nothing in the regulations made such a record relevant to the certification process.

One month later, through an unrelated press article about rehabilitation, the other superintendents became aware of Tom’s record. One immediately emailed Superintendent Van Wickler, calling Tom an “embarrassment to corrections.” Some of the superintendents went so far as to try to revoke Tom’s certification, despite the fact that Tom’s hiring complied with every letter of the law at the time. Nowhere in the certification process was there a question about an applicant’s record. The regulations left it up to each county jail to conduct their own background investigation and hire those whom they thought appropriate. An applicant’s criminal record was a non-issue, until the other superintendents made it into one.

“Anyone can do time. It’s getting out and having a record that’s the hard part.”
-Tom

A tied vote prevented the revocation of Tom’s certification. But, refusing to be discouraged, a few of the superintendents tried a different route, successfully changing the corrections bylaws to make a criminal record disqualifying for employment.

By this time, Tom had resigned from Cheshire in order to go to grad school in Boston. Since graduation, Tom has remained committed to a career in corrections, but has found his options few and far between as his record continues to haunt him. “Anyone can do time. It’s getting out and having a record that’s the hard part,” Tom said recently.

Since his arrest at a young age, Tom has been an upstanding citizen. He did what society most wants from someone arrested – he learned from his one encounter with the criminal justice system. He reformed his behavior, and yet the system continues to punish him.

Corrections is not a glamorous field. It is physically and mentally demanding, involves physical risk, and yet pays little. Here is a person with experience, with a strong desire to give back, and with a unique understanding of the corrections system. Why is the corrections system so intent on keeping him out?

RECOMMENDATIONS

As New Hampshire struggles with both an opioid crisis and a workforce shortage, employers, state government, and society as a whole would benefit from re-thinking how much we wish to permanently punish those with records given the significant social and economic toll. Below are a set of recommendations aimed at reducing the barriers to successful-entry to the workforce – and to reducing the risk of recidivism.

Adopt Fair Chance Hiring: Currently, many Granite State employers include a box on their paper or online application forms, which people are asked to check if they have a criminal record. It is not uncommon for employers to then exclude all applications with a checked box,

without interviewing the applicant to inquire about the specifics of their record or any subsequent rehabilitation. We recommend that New Hampshire adopt fair chance hiring by removing the box on all application forms. Employers would still be allowed to inquire whether applicants have a criminal record, but would be required to do so in person, allowing the applicant a chance to explain their record. The goal is to encourage employers to not discount applicants automatically because they have a record, particularly when the details of that record are unknown. Employers may still choose not to hire someone because of their record, but the goal is for that decision to be made knowing the context of the applicant's record and weighing that against their qualifications.

Occupational Licensing Reform: There are two areas for reform here with the first being administrative.

- **Exclude annulled crimes when asking about an applicant's record:** As discussed in this report, numerous occupational boards currently ask whether an applicant has ever committed a crime, without qualifying it to exclude annulled crimes. A simple, but necessary, step is for every occupational licensing board to edit their requirement to make clear to applicants that they do not have to disclose annulled crimes.
- **Fair Chance Licensing Reform:** Like fair chance hiring, licensing boards would increase hiring opportunities if they did away with their own version of "the box." A criminal record should not be an automatic disqualifier, particularly if the criminal offense has no relation to the occupation at hand. This does not mean that licensing boards should be required to accept anyone with any record. As with fair chance hiring, the goal should be to enable applicants to better explain their record, and for that record to be considered against the sought after qualifications for the specific license, certification, or registration at hand. If an applicant is excluded because of their record, it should be because the record directly relates to the responsibilities and qualifications for the license or certification being sought.

DMV License Tolling: When individuals are incarcerated, they are unable to renew their driver's license. Individuals serving an extended sentence are particularly likely to have an expired license at the time of their release. This in turn can limit one's ability to get a job, both due to the inability to travel to employers and due to some employers requiring an active license for employees. This is a particular hardship for those living in rural areas. A simple amendment to RSA 263:10 that stops the tolling of the five-year life of a driver's license from the time of incarceration until release would remove this small but significant barrier.

Department of Employment Security (DES)/ Department of Corrections (DOC) Pilot Program: The Department of Employment Security does not provide "getting a job" training at houses of corrections or at the state prison. The absence of that training is a matter of resources, not policy or a lack of interest by DES and DOC. Both departments expressed interest in providing such training, recognizing the obvious benefits to improving the likelihood of successful re-entry. The training would relate to the basics that are provided at any local DES office: searching for a job via the paper or the internet; interview skills; resume building etc. DES' local offices also provide computers for individuals to access training on job searching and

to look for jobs. People soon to be released or just released would benefit greatly from having these same services provided to them while incarcerated or at half-way houses.

A pilot project would enable DES to provide such services at the Concord and Manchester halfway houses. It would pay for one full-time person who would split time between the Manchester and Concord locations and for the necessary computers and other infrastructure to have a fully functioning office. The estimated cost would be \$250,000. The small pilot project could immediately benefit people seeking to re-enter society and better inform DES and DOC of the needs of those recently released. It could inform a similar future project for DES to provide select services in houses of corrections. As New Hampshire grapples with the opioid epidemic, improving the chances of successful re-entry benefits everyone.

WHITNEY

Whitney's teen years were not the best. She hung out with the wrong crowd, often at the expense of school. Fearing the road she was headed down, and as a single parent, her father made the decision to move them from Florida up to Vermont to be closer to extended family. As it turns out, their area of Vermont did not provide much shelter from the drug and alcohol scene, and Whitney's use continued to escalate.

Whitney's exposure to the drug trade came through her boyfriend and his mother, both dealers, mostly of marijuana initially. The boyfriend didn't have a driver's license, so Whitney often drove him around - including to pick up and deliver drugs. Over time, Whitney found herself fully immersed in the drug scene, exposing her to new drugs like cocaine, crack, ecstasy, and eventually heroine.

One afternoon, Whitney and her boyfriend agreed to meet another dealer in a parking lot. When they arrived, they were quickly surrounded by police and arrested. Whitney was charged with conspiracy to sell a controlled substance.

Released pre-trial, she felt lost, with no money and no home base. She called her father who answered with tough love. He would help her but only if she sought treatment. Looking back, Whitney talks with emotion about how much her father's intervention redirected her life. "I didn't think of myself as an addict at the time," Whitney says, looking back, "I wouldn't have considered treatment if it weren't for my dad. He told me that if I didn't seek treatment, he couldn't help me, and I wouldn't have a home."

Largely because of her father's tough love and because she was petrified of being "dope sick," she did seek treatment. She completed a seven-day detox program that was followed by a 30-day in-patient program. Upon successful completion of that, she attended a six-week intensive outpatient program. She also joined Narcotics Anonymous and completed their "90 meetings in 90 days" program.

Recognizing her commitment to rehabilitation, the prosecution settled on a 3 ½ to 7 year suspended sentence. Whitney completed this without incident.

Her first job afterwards was working for her stepfather at a wire coiling company. Because of her stepfather, Whitney never had to apply formally for the job. No application meant no box to check.

“We have to overcome the stigma, and we can’t do that if employers can automatically discount applications with a checked box.”

-Whitney

Whitney went on to a job with a warehouse, doing mostly administrative work. “I probably lied,” Whitney said, when asked if she had to check a box in applying for that job. “I was terrified to tell anyone about my past.”

With an eye on the long-term, Whitney sought a job in the insurance industry. Over the past several years, she has worked her way up from an administrative job to a senior management position.

She initially withheld information about her record from the company, fearing that they would turn her down if they knew. A couple years in, Whitney set out to earn her insurance license. Because of her record she had to complete additional steps with the insurance commission, which required disclosing her record to her employer of multiple years. While being one of the most stressful undertakings in her career, her employer proved sympathetic. By then the owner of the company knew Whitney as a hardworking and loyal employee. More than that, the owner expressed an understanding that everyone messes up at some point and deserves a second chance.

Whitney now has her license and continues to move up in the company. And yet, even as successful as she is, she still worries about her record. “If I wanted to change jobs for whatever reason, I know my record could potentially hold me back.” She also worries what her record means should she want to travel overseas, or even across state lines with her family. Over a decade later her record still looms over her.

Whitney understands why employers are reluctant to take a chance on people with a record. “I work with HR in hiring staff today, and if I received an application from someone with that box checked even I would be reluctant to hire them, even though I’ve been through it myself. The stigma is that strong.” It is because of this that Whitney appreciates the need for fair chance hiring, so applicants have an opportunity to explain their situation. “We have to overcome the stigma,” she said, “and we can’t do that if employers can automatically discount applications with a checked box.”

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